Royalty-in-Kind (RIK)

Determination of Need

Analysis Paper

April 1, 1999

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ARD/RMP/MMS

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Background

- This determination of need analysis implements one of the recommendations made in a December 1997 study entitled, "Phase II Report, Eligible Refiner Oil RIK Program." The report concluded that a "proactive, structured, and documented methodology" should be used to conduct future royalty-in-kind (RIK) determinations of need.

- Prior to this structured approach, past efforts to discern market trends and the status of small refiners were, in large part, fragmented and sporadic. We felt that a more structured approach would give the Minerals Management Service (MMS) a blueprint for conducting a methodical, empirical, and reasonable determination concerning program status. The key word here is "empirical"—a decision based not on scientific formula or precise market trend forecasting, but one based on an effort to consult with representatives of the refining community as well other Government agencies (like the Department of Defense (DOD) and the Department of Energy (DOE)) to ensure that additional perspective and national interest considerations were introduced to the process.

Methodology

- In accordance with the December 1997 recommendation to the Director, MMS, we completed the following steps in anticipation of making an "informed" decision regarding the status of the RIK program. Inasmuch as this was our first attempt to assess refiner status using a structured approach, we took extra measure to ensure that this effort was widely advertised and done in the most objective, fair manner possible.

  - ♦ We issued a Federal Register Notice (attachment 1) on December 9, 1998, inviting all interested parties, especially small and/or independent refiners, to provide written comments regarding their experiences in the crude oil marketplace. Specifically, we were interested in small and/or independent refiners' experiences in gaining access to adequate supplies of crude oil at equitable prices. We asked that respondents provide written feedback on or before January 25, 1999, to 13 questions designed to help us evaluate the need for conducting another RIK sale(s).

  - ♦ To ensure widespread distribution of our solicitation for comments, we also did a mass mailing of the solicitation (attachment 2) to 264 companies based on past and present company listings for RIK participants. We also relied on DOE data on operating refineries and DOD data on refineries supplying jet fuel and other refined products to military and Federal installations. Further, a formal agency News Release dated December 10, 1998 (attachment 3), was prepared and included in various trade publications like the *Oil and Gas Journal*. We also solicited comments from the Western States Land Commissioners' Association and the Western Governors' Association.

- We consulted with DOE, DOD, and the Small Business Administration (SBA) to discern any national interest or national defense considerations in accordance with regulatory requirement (see attachment 4—30 CFR 208.4(a)). More specifically, we interfaced with the following offices for the reasons noted:
  - DOE: the Energy Information Administration (EIA) for purposes of discerning near and long term market forecasts for the petroleum industry;
  - DOD: the Defense Logistics Agency, Defense Energy Support Center (DESC), for purposes of confirming current program refiners' participation in the military jet fuel pipeline and estimating small refiners' overall impact on the military fuel program; and
  - SBA: the Office of Advocacy to coordinate SBA feedback and help determine whether RIK program objectives were consistent with SBA goals related to small/minority business development.

Criteria

- In terms of the criteria used to analyze the comments and feedback received, we essentially adhered to the fundamental criteria found at 30 CFR 208.4(a), which provides that "...The evaluation will include (emphasis added), among other things, the availability of crude oil and the crude oil requirements of the Federal Government, primarily those requirements concerning matters of national interest and defense. The Secretary will review these items and will determine whether eligible refiners have access to adequate supplies of crude oil and whether such oil is available to eligible refiners at equitable prices..." We expanded the "availability criterion," however, to include consideration of market trends or forecasts that may tend to alter the supply/demand landscape for small, independent refiners.

- Again, without making any claims of doing a scientific analysis based on statistical inference, we relied on "empirical data"—i.e., survey feedback combined with input from other government agencies having a stake in the national interest—to analyze eligible refiner status and marketplace conditions.

- We analyzed survey feedback in terms of the extent to which respondents indicated their status with regard to **three fundamental criteria**:
  - **access to the crude oil marketplace (now and in the future);**
  - **ability to obtain necessary crude oil supplies at equitable prices; and**
  - **national interest considerations.**

Demographics

- A total of 23 companies responded to our Federal Register solicitation (attachment 5). We catalogued the attributes, or demographics, of the respondent universe (attachment 6) with the goal of distilling the feedback into manageable bits of information for purposes of doing the determination of need analysis. (These demographics can also be used at a future date to assess the propriety of doing one or more regional RIK sales.)

- No major oil and gas producer responded to either our Federal Register information collection request or the mass mailing of the solicitation.

- Some of the more compelling demographics, especially those related to the three fundamental criteria above, are highlighted in the ensuing sections.

Access to the Market

> 22 of 23 respondents (96%) have either been denied access to the crude oil marketplace in recent months or have concerns about future access due to market trends.

- According to DOE/EIA, the current world market for oil is in a state of "oversupply and weak prices,"[1] a condition attributable to these factors:
    - the return of Iraq to oil markets in January 1997, without OPEC or other producers reducing their production to make room for the extra supply;
    - Asia's economic collapse and related reduction in demand (Asia had been the region of largest petroleum consumption growth);
    - two consecutive warm winters worldwide; and
    - non-OPEC and other OPEC supply growth on top of Iraq.

- Impacts of the large oversupply (or "stock overhang") include:
    - a reduction in operating oil rigs; and
    - declining domestic exploration and production expenditures.[2]

- DOE/EIA concludes that "...oil prices are not likely to return to the $17-$21 range until the end of the year 2000 or 2001. This is good news for consumers and the general economy. The downside is that imports will likely rise as the domestic oil industry reduces costs, increases productivity, or contracts, with accompanying regional economic impacts, including job losses, business losses, and reduced severance tax revenues."[3]

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[1] See "Statement of Jay Hakes, Administrator, Energy Information Administration, Department of Energy, Before the Energy and Natural Resources Committee, U.S. Senate, January 28, 1999," pg. 4.

[2] Ibid., pp. 4-5.

[3] Ibid., pg. 5.

- While we acknowledge developments in the global petroleum market have resulted in a recent upward trend in the price of crude oil and related consumer products, it is unclear what the ultimate impact on prices and supplies will be. Since such developments can be either short lived or of a more permanent nature, it's speculative to assume the outcome will mitigate refiner concerns about limited market access.

> Survey respondents and DOE/EIA have a similar view of the petroleum market landscape. The respondents say prevailing market conditions limit the extent of their access to needed oil supplies.

- DOE/EIA forecasts appear to reflect a trend similar to that identified by the respondents. Both DOE/EIA and many of the respondents see the market as being generally characterized by an overabundance of oil, low prices, domestic production cutbacks, increased reliance on foreign imports, etc. Each also considers that this trend may persist for quite some time.

- Based on the feedback we received, several small refiners argue that the current abundance of world oil has depressed prices to the point where domestic producers have curtailed drilling operations and shut in production in some areas, making it difficult for them to negotiate anything but short term contracts.[4] The use of "spot" markets generally requires the payment of a premium amount per barrel, further eroding the small refiners' operating margins and making it exceedingly difficult to stay in business.[5] One respondent also notes that, while there may be a glut of world oil, relying on foreign crude sources can be particularly challenging for small refiners who generally lack the logistical capability to effectively compete for crude oil imports.[6]

- One respondent argues that "independent producers" suffer from the mergers between major oil companies.[7] Not only do they lose potential sales when competing with the huge conglomerates, but they feel the supply pinch more greatly during times of low oil prices. When independent producers suffer, so

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[4] One respondent further suggests that, when supplies are tight, small refiners are exposed to shortages because of their secondary (or non-affiliated) relationship with the major producers.
[5] One respondent, a current RIK program participant, contends that "...The small refiners have a thin profit margin, and a few months of uneconomical crude oil supplies, or no supply at all, could ruin our business."
[6] See one respondent's February 8, 1999, letter, pg. 3.
[7] See one respondent's January 25, 1999, letter, pg. 5.

do small refiners who frequently rely on them for desired onshore production. DOE/EIA validates this observation by saying that "...As exploration and development slow, U.S. onshore areas see the effects first..." and "...Since independent producers represent the majority of onshore production...they are likely to bear a larger portion of the U.S. production decline than the major oil companies."[8]

- One respondent also suggests that deregulation in the form of lifting of the Alaska North Slope (ANS) crude export ban has made it difficult getting stable supplies of desirable ANS oil which is being sold to more lucrative Far East markets.[9]

Availability of Oil at Equitable Prices

10 of 23 respondents (43%) generally must pay a bonus or premium over published prices for crude oil needed for refinery operations.

- Given that market trends may not be reversed until early in the new millennium, several small, independent refiners expect to continue to pay premium prices into the foreseeable future.

- Even those respondents claiming to only pay market prices have expressed some concern that they, too, may soon be subjected to inflated prices in the face of domestic supply cutbacks.[10]

- It's important to also note, in the context of price equity, that recipients of royalty oil (like the five current RIK program participants) greatly benefit from the opportunity to "exchange" that oil for the feed stock needed to sustain their mix of refined products.[11] Absent the availability of royalty oil to use as trade stock, prices can be much higher during times of restricted pipeline access.

[8] EIA Administrator testimony to the U.S. Senate, January 28, 1999, pg. 5.

[9] One respondent contends that "...The lifting of the ban on ANS crude exports by Congress in 1995 has resulted in an estimated 50,000 barrels per day being sold to the Far East..." causing the company "...to rely on the uncertainties of the spot market..." See respondent's February 8, 1999, letter, pg. 2.

[10] Two respondents may not be paying bonus prices currently, but their remarks strongly infer that restricted access to the market, occasioned by the trend towards mergers and sharp decreases in production, could dramatically increase their raw material expenditures in the near future.

[11] All five current program participants stress the importance of having Federal royalty oil to trade for crude oil needed to sustain their mix of refined products.

National Interest Considerations

> 14 out of 23 respondents (61%) provide jet fuel and other refined products to the U.S. military or other Federal installations. 4 out of 23 (17%) provide refined products to States, cities, counties, and local municipalities.

- DOD's contracting office for bulk fuels, the Defense Energy Support Center (DESC), says that small business accounts for about 20% of total annual domestic procurements involving military jet fuel (JP-5, JP-8) and light distillate for Naval ship propulsion.[12]

- DESC advises that it actively encourages small refiners to participate in the military jet fuel pipeline through its "partial set aside program." Under this program, small refiners within specific geographic locations can negotiate set aside contracts (at competitively bid prices) for partial volumes of jet fuel or distillate earmarked for designated military facilities. The program is beneficial because it: a) supports the strategic objective of achieving diversity in supplies and locations, and b) promotes small and/or minority business development.[13]

- While it's debatable that our military readiness would be hampered by discontinuance of the RIK program, DESC readily admits that past and present RIK program refiners have played, and continue to play, prominent roles in the jet fuel supply pipeline for DOD. DESC recommends that this fact should be given appropriate consideration before any final decision is made regarding the future of the program.[14]

- DESC supports the current program refiners' position that RIK oil offers the U.S. Government diversity in suppliers and locations, and cautioned they would not like to see any RIK refinery default on its contractual obligations due to inadequate oil supplies. Three current RIK program participants have active contracts with DESC for the provision of jet fuel and distillate.[15] Each of these program participants has received volumes awarded under DESC's partial set

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[12] See telephone conversation of February 10, 1999, between Tom Brozovich (RMP) and Chief, Contracting Division for Bulk Fuels, DESC.

[13] See telephone conversation of March 25, 1999, between Tom Brozovich (RMP) and DESC.

[14] See telephone conversation of December 3, 1998, between Tom Brozovich (RMP) and DESC.

[15] Ibid.

aside program.[16]

- Attachment 6 contains a demographic regarding respondents' provision of refined products to military bases and other government installations.

- While only four respondents claim to provide refined products to States and other local government agencies, the scope of what they provide is described below:

  - One respondent claims to provide asphalt for road construction and maintenance in 2 States, supplying about 40% of all asphalt used in one of the benefitting States. The respondent further states that 70% of the asphalt supplied to that State is used to support Federal and State funded projects.

  - One respondent states it is a major supplier of asphalt for road construction and maintenance programs in various States. The company also claims to be the largest supplier of asphalt roofing products in one of those States.

  - One respondent advises it produces motor gasoline and distillates which are marketed in 19 cities in 7 States.

  - One respondent states it supplies asphalt to cities, counties, and States for road construction and maintenance programs, satisfying a significant amount of two States' overall demand for paving asphalt.

The Small Business Administration's (SBA) Office of Advocacy believes that the RIK program is beneficial for maintaining a competitive marketplace, and strongly encourages MMS to "reopen the process" (reference to a new sale of royalty oil) to allow for re-entry by

- While the SBA's Office of Advocacy is **not** authorized to speak on behalf of the SBA, it nevertheless provided some unofficial comments and conclusions based on a review done by its special Office of Economic Research; input obtained from industry through conference calls and an industry roundtable meeting; and inquiries to minority groups.

[16] See telephone conversation of March 25, 1999, between Tom Brozovich (RMP) and DESC.

old players and access by other small businesses.

- The Office of Advocacy's salient comments include:
  - "...continuation of the program is necessary to maintain a competitive marketplace and maintain reasonable oil prices for the industry and the national economy."[17]
  - "...members of industry that spoke with Advocacy asserted that since the RIK contracts are for a 3-year period rather than the customary 45 to 90 day contracts offered by the major oil companies, the RIK program offers small businesses a type of security..."[18]
  - Some of the refining companies contacted said that decline in RIK program participation has been due to program inefficiencies, price uncertainty, and the potential for retroactive price adjustments, not because of lack of interest in the program. Under MMS' new policies (a reference to process improvements like implementation of negotiated prices), members of industry indicated that additional companies would probably want to re-enter the program or become first-time participants.[19]
  - The Office of Advocacy is particularly concerned that some small businesses would like to enter the program but cannot because MMS has not reopened the process in several years. As a result, they "implore" MMS to address this issue in the near future.[20]
  - They question whether MMS has conducted sufficient outreach to educate disadvantaged businesses about program availability and benefits, thereby casting doubt about whether the program would meet the goals of the SBA's Office of Minority Development.[21]

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[17] See Assistant Chief Counsel for Economic Regulation memorandum of March 11, 1999, pg. 2.
[18] Ibid., pg. 3. "Security" in this context refers to long term supplies for refinery operations.
[19] Ibid., pg. 3.
[20] Ibid., pg. 3.
[21] Ibid., pg. 3.

RIK Program Benefits

- For the most part, respondents to the Federal Register information collection consider the oil RIK program to be essential to their economic survival and critical to the maintenance of a diversified refining base for purposes of national security. More specifically, they believe that RIK provides the following benefits for themselves and the U.S. Government:

  - **Stable supply of oil.** As mentioned earlier, during times of low prices and reduced domestic petroleum production, small, independent refiners frequently find it difficult to negotiate anything but short-term or spot contracts. They assert that major oil producers and their fully integrated marketing affiliates will generally reserve the bulk of domestic inventories for their own refineries during "depressed" economic conditions. The oil RIK program helps level the playing field by ensuring that small refiners get a stable supply of the oil they need to remain viable and competitive in today's marketplace.

  - **Guarantee of equitable prices.** While the RIK program will not give a price break to participating refiners, it will guarantee that participants will be charged fair market value for the royalty oil received, in accordance with prevailing regulations. In other words, small refiners will not be subjected to inflated prices deriving from their lack of marketplace influence or affiliation.

  - **Vital source of trade stock.** As briefly discussed under the "Availability of Oil at Equitable Prices" section above, royalty oil gives small refiners valuable trade stock for obtaining the type and quality of crude oil needed to sustain their mix of refined products.[22]

  - **Indirect benefit to independent producers.** As discussed earlier and as supported by DOE/EIA's market analysis, independent producers generally bear a larger portion of any domestic production declines than the major oil companies. Since small refiners are frequently an important part of independent producers' customer base, they become an "indirect beneficiary" of the RIK program. One respondent notes that "...Independent producers are losing potential sales markets each time another mega-merger is announced. The result is that in the long run, independents could have so few alternatives for selling their oil, that they will find themselves in a monopolized environment. The long term health of small refiners provides more market stability to independent producers."[23]

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[22] One respondent, in its January 19, 1999, letter, pg. 2, confides that "...Pipeline constraints prevent...from shipping Gulf Coast RIK crude directly to the refinery. The RIK oil purchased is instead used as trade stock and traded to refineries in the Gulf Coast area who also control crude oil near our...refinery..."

[23] See one respondent's January 25, 1999, letter, pg. 5.

- **Self-funding program.** By paying an administrative fee, based on program costs, participating refiners essentially fund the RIK program. Many respondents have carefully cited this fact, arguing that the self-funding nature of the program should be further incentive for the Government to perpetuate the program.

- **Diversified refining base.** Again, as suggested under "National Interest Considerations," the RIK program is important because it affords a stable supply of oil for small, independent refiners many of whom have active contracts for the provision of military jet fuel. One respondent notes that "...The small and independent refiner offers the U.S. Government diversity in suppliers and locations for its military jet fuel needs. Without having access to crude oil at equitable prices, the small and independent refineries will obviously not be able to meet the government's requirements for military jet fuel. This would result in the government having to buy its requirements from the remaining mega-merged oil companies, many of which have a foreign ownership interest (emphasis added)..."[24]

Conclusions

- Based on "empirical data" (as provided by the survey respondents), **we conclude that sufficient need exists among small petroleum refining companies to continue the eligible refiner oil RIK program**. This conclusion is predicated on respondents' documented concerns about lack of stable access to the marketplace and the premium prices they frequently must pay to obtain desired feed stock.

- The diversity in supplies and locations offered by small, independent refiners (many of whom rely on RIK oil to fulfill their DESC contractual requirements) **and** the contribution by small businesses to the military jet fuel pipeline combine to make the eligible refiner oil RIK program an important contributor to national security. Furthermore, the program could have implications for several States and local governments, and the SBA's Office of Advocacy unofficially endorses program continuance.

Recommendation

- **MMS/RMP should continue the program and conduct another RIK sale as soon as possible**, taking additional steps as necessary to ensure widespread coverage among minority/disadvantaged businesses in accordance with the SBA Office of Advocacy's recommendation.

[24] See one respondent's January 25, 1999, letter, pg. 2.

Attachment 1

development of the BLM California Strategic Plan, a status report on Headwaters, and a report on implementation of the Knoxville Management Plan. Managers of the BLM Arcata, Redding and Ukiah field offices will also present reports. Time will be reserved at 4 p.m. for public comments. Depending on the number of persons wishing to speak, a time limit may be established.

On Friday, Jan. 22, members will convene at 8 a.m. at the Konocti Harbor Resort lobby, and depart immediately for a tour of the Payne Ranch property which will be acquired for public use.

Members of the public are welcome on the tour, but they must provide their own transportation. The tour and meeting will conclude by noon.

FOR ADDITIONAL INFORMATION: Contact Joseph J. Fontana, public affairs officer, at (530) 257-5381.

Joseph J. Fontana,

Public Affairs Officer.

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BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

TITLE: Solicitation for Comments: Royalty-in-Kind (RIK) Determination of Need.

SUMMARY: The Minerals Management Service (MMS), an agency of the U.S. Department of the Interior, is requesting written comments from interested parties—particularly from small and/or independent petroleum refiners—regarding their experiences in the crude oil marketplace. Specifically, we are interested in small and/or independent refiners' experiences in gaining access to adequate supplies of crude oil at equitable prices. This Determination of Need process will assist the Secretary of the Interior in deciding whether or not to conduct a sale(s) of Federal Government royalty oil under the Royalty-In-Kind (RIK) program.

DATES: Responses must be submitted on or before January 25, 1999.

ADDRESSES: Responses sent via the U.S. Postal Service should be sent to Tom Brozovich, Accounting and Reports Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3131, Denver, Colorado 80225-0165; courier address is Building 85, Room B513, Denver Federal Center, Denver, Colorado 80225; e-mail address is thomas.brozovich@mms.gov.

FOR FURTHER INFORMATION CONTACT: Tom Brozovich, Accounting and Reports Division, phone 303-231-3351, FAX 303-231-3711, e-mail thomas.brozovich@mms.gov.

Background Information

Under the provisions of the Mineral Leasing Act of 1920 (MLA), as amended (30 U.S.C. § 192), and the Outer Continental Shelf Lands Act (OCSLA) of August 7, 1953, as amended (43 U.S.C. § 1334, 1353), the Secretary of the Interior can take Federal royalty oil in kind, in lieu of royalty payment, and sell it to "eligible refiners" for use in their refineries. The oil RIK program is governed by the regulations at 30 CFR 208, effective December 1, 1987, (52 FR 41908, 10/30/1987).

An "eligible refiner," as defined at 30 CFR § 208.2, means a refiner of crude oil meeting the following criteria to purchase royalty oil:

(1) For the purchase of royalty oil from *onshore leases*, it means a refiner that has an operating refinery and qualifies as a small and independent refiner as those terms are defined in Sections 3(3) and 3(4) of the Emergency Petroleum Allocation Act, 15 U.S.C. 751 *et seq.* A refiner that, together with all persons controlled by, in control of, under common control with, or otherwise affiliated with the refiner, inputs domestic crude oil from its own production exceeding 30 percent of total refinery input is ineligible to participate in royalty sales under this part. (In other words, to be eligible under this part, the refiner must receive at least 70 percent of his feeder stock from unaffiliated sources.) Crude oil received in exchange for the refiner's own production is considered to be part of that refiner's own production for purposes of this section.

(2) For the purchase of royalty oil from *offshore leases*, it means a refiner that has an operating refinery and qualifies as a small business enterprise under the rules of the Small Business Administration (SBA) (13 CFR Part 121). The SBA standard for a small business within the Petroleum Refining Industry is less than or equal to 75,000 bbl per day, and less than or equal to 1,500 employees.

The regulation at 30 CFR § 208.4(a) governs the Determination of Need process and states that:

> The Secretary may evaluate crude oil market conditions from time to time. The evaluation will include, among other things, the availability of crude oil and the crude oil requirements of the Federal Government, primarily those requirements concerning matters of national interest and defense. The Secretary will review these items and will determine whether eligible refiners have access to adequate supplies of crude oil and whether such oil is available to eligible refiners at equitable prices. Such determinations may be made on a regional basis. * * *

Given that existing RIK contracts (involving Gulf of Mexico and Pacific Region offshore leases) expire May 1, 1999, MMS has concluded that a Determination of Need would be most beneficial in any decision to hold future royalty oil sales.

SUPPLEMENTARY INFORMATION: While the RIK program has been an important source of crude oil for many refiners over the years, it has not been without its problems. From its heyday in the late 1970's and early to mid 1980's, the program has declined from over 60 active contracts (both onshore and offshore) to the current total of only six offshore contracts. Many factors have contributed to the diminished participation, including the following:

• The surplus of crude oil supplies on both the international and domestic markets, which has made it easier for small refiners to purchase the oil they need to run their refineries without having to rely on Federal royalty oil; and

• Complexities of the current program, which has been characterized as having burdensome reporting and administrative requirements and valuation uncertainty.

MMS has completed a study of the oil RIK program and is conducting a pilot (Eligible Refiner Oil RIK Pilot, OMB Control Number 1010-0109) to check the results of that study. The pilot is reviewing reporting and delivery issues symptomatic of the current program. This effort should be completed by the end of calendar year 1998, with formal recommendations for streamlining the program to be submitted to the Director, MMS, in early 1999. While it's premature to predict the exact nature or scope of forthcoming program changes, it's not unreasonable to expect:

• Changes to current regulations affording greater clarity and logical business practice in the areas of administrative fees, transportation allowances, operator delivery requirements, resolution of delivery imbalances and gravity bank adjustments, etc.; and

• Greater specificity and certainty with regard to RIK contract language, especially with regard to provisions addressing the valuation of RIK oil for billing purposes.

Consequently, the current program could undergo dramatic changes in the near future as various pilot efforts reach maturity and resulting recommendations are implemented.

Potential respondents should also note that the mere conduct of a Determination of Need in no way presupposes that there will or will not be a subsequent RIK sale(s). A Determination of Need is a logical first step in identifying general marketplace conditions. However, any decision to conduct an RIK sale(s) will necessarily be predicated on the regulatory criteria of "access" and "equity"—i.e., whether a significant number of refiners have limited or no access to the marketplace and/or have experienced difficulty in negotiating a fair price for feeder stocks.

Information Requested

To assist MMS in completing a Determination of Need, please respond in writing or electronically to the following questions:

(1) How would you describe your business activity—small/independent refiner, other refiner, producer, transporter, etc.?

(2) For your immediate region or geographic area of operation, how would you characterize the general availability of crude oil?

(3) Do you currently own or lease an operating refinery? If so, where is it located?

(4) Is your refinery operating at full or near-full capacity? If not, why not?

(5) Do you meet the RIK program eligibility criteria previously noted for onshore or offshore leases, or both?

(6) What percentage of onshore versus offshore crude oil volumes are currently being run through your refinery?

(7) What type of crude is desired to sustain your mix of refined products—Wyoming Sweet, Wyoming Sour, Light Louisiana Sweet, etc.?

(8) Have you been denied access to crude oil supplies in the past 12 to 18 months? What was the basis for the denial? For example, was the denial attributable to unavailability of desired crude, a lack of access to the transportation pipeline, or other reasons? Please provide documentation supporting any claim of denial.

(9) Do you use exchange agreements? Why?

(10) Are the feeder stocks you purchase priced above market values for your geographic area? In other words do you pay a bonus or premium because of your status as a small and/or independent refiner? Please identify, by crude oil type, what you pay on the average per barrel of oil.

(11) Have you previously participated in the Federal royalty oil program? If a prior program participant, why did you leave the program? How would you now benefit from receiving Federal royalty oil?

(12) Do you currently provide refined products (heating oil, jet fuel, etc.) to a U.S. military base or Federal installation? If so, identify the recipient facility and how long you have been supplying refined products.

(13) Do you anticipate any near term developments that would change your access to necessary supplies of crude oil at equitable prices?

All correspondence, records, or information received in response to this Notice, and specifically in response to the questions listed above, are subject to disclosure under the Freedom of Information Act. All information provided will be made public unless the respondent identifies which portions are proprietary. Please highlight the proprietary portions, including any supporting documentation, or mark the page(s) that contain proprietary data.

The Paperwork Reduction Act of 1995 requires us to inform you that this information is being collected by MMS under an approved information collection titled Royalty-in-Kind (RIK) Determination of Need, OMB Control Number 1010–0119. We estimate the burden for responding to this information collection 4 hours. Comments on the accuracy of this burden estimate or suggestions on reducing this burden should be directed to the Information Collection Clearance Officer, MS–4230, MMS, 1849 C Street, N.W., Washington, DC 20240 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the U.S. Department of the Interior (OMB Control Number 1010-0119), Washington, DC 20503. Proprietary information is protected by the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552 (b)(4), the Indian Minerals Development Act of 1982 (25 U.S.C. 2103) and Department regulations (43 CFR 2). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dated: December 2, 1998.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 98–32580 Filed 12–8–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Proposed Land Exchange City of Alexandria and Arlington County, Virginia and Notice of Scheduled Environmental Review Process Workshop

AGENCY: Notice is hereby given that the National Park Service (NPS) is proposing to conduct an exchange of land interests with Commonwealth Atlantic Properties Inc., Commonwealth Atlantic Land Company, and Commonwealth Atlantic Land V Inc., hereinafter referred to collectively as Commonwealth. The proposed exchange of land interests concerns two distinct properties located in Alexandria, Virginia, and Arlington County, Virginia, respectively. The National Park Service has scheduled a public workshop as part of its environmental review process to identify and analyze the potential environmental impacts of the proposed exchange.

FOR FURTHER INFORMATION CONTACT: Associate Superintendent, Stewardship and Partnerships, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

SUPPLEMENTARY INFORMATION: By virtue of an Indenture land agreement dated February 12, 1938, the Richmond, Fredericksburg and Potomac Railroad Company (RF&P), predecessor in title to Commonwealth, conveyed to the United States certain land use restrictions over 29.1 acres of land in Arlington County, Virginia, currently owned by Commonwealth and hereinafter referenced as the "Indenture Land."

Commonwealth also owns 38.55 acres of land in Alexandria, Virginia, hereinafter referenced as "Potomac Greens." By virtue of a Deed of Easement dated August 13, 1984, and in accordance with the terms of a previous Exchange Agreement between the United States and RF&P, the United States conveyed to RF&P a perpetual easement on and across a portion of lands of the George Washington Memorial Parkway (Parkway) for access including ingress and egress from the northbound and southbound lanes of the Parkway to and from Potomac Greens in return for RF&P's obligation to construct at no cost to the United States a center-piered bridge and all associated ramps and connections necessary for ingress and egress to and from Potomac Greens to the Parkway and other valuable consideration.

Attachment 2

Attachment 2 is the form letter and mailing list RMP used to distribute the Federal Register Notice to various refining companies. Due to the size of this attachment, we have opted not to include it on the Pipeline.

You can obtain a copy of the form letter and mailing list by contacting **Tom Brozovich** at:

303-231-3351
FAX 303-231-3711
Thomas.brozovich@mms.gov

MMS

U.S. Department of the Interior
Minerals Management Service
Office of Communications

NEWS RELEASE

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MMS TO DETERMINE IF ROYALTY-IN-KIND OIL FOR SMALL REFINERS IS NEEDED

The U.S. Department of the Interior's Minerals Management Service (MMS), is initiating a Determination of Need process to help decide if there should be a sale of federal government royalty oil under its small refiner Royalty-In-Kind (RIK) program.

While royalty payments are usually made in cash, the MMS may also take its royalty percentage "in-kind" such as in actual products. In-kind oil is accepted in lieu of cash royalties from companies producing oil from leases located on federal onshore and offshore lands.

An RIK program for small refiners was initiated by the Department of the Interior to assure small, independent refiners of an adequate supply of equitably-priced crude oil. MMS conducted sales in 1983, 1987 and 1994. Existing RIK contracts expire May 1, 1999. A Determination of Need is not an indication of a pending sale but the first step in identifying general marketplace conditions. The information gathered will be used to assist the Secretary of the Interior in making a determination about a sale.

"In a highly competitive market, small refiners are not always successful in procuring enough crude to assure a dependable production stream," explained MMS Director Cynthia Quarterman. "When needed, MMS conducts a sale of RIK oil to eligible independent small refiners and over the years, the small refiner RIK program has been an important source of crude oil for many refiners."

Recipient refiners pay for the oil at a fair-market price, providing the federal government with no less than it would have received had it accepted cash royalty payments. Additionally, recipient refiners pay costs of operating the program through administrative fees.

"The preservation of small businesses and the jobs they create is one of this Administration's primary goals," said Quarterman. "Making royalty-in-kind oil available to small refiners is a means to help accomplish this objective."

In the December 9, 1998, *Federal Register*, the MMS is requesting comments and written responses to 13 questions from small and independent petroleum refiners, as well as other interested parties, regarding pricing and access to crude oil Responses for official consideration must be submitted by January 25, 1999, to Tom Brozovich, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3131, Denver, Colorado 80225-0165, or by E-mail to thomas brozovich@mms.gov. He may also be reached by telephone at (303)231-3351 for additional information

MMS is the federal agency that manages the Nation's natural gas, oil and other mineral resources on the Outer Continental Shelf, and collects, accounts for and disburses about $6 billion yearly in revenues from offshore federal mineral leases and from onshore mineral leases on federal and Indian lands.

-MMS-

MMS Internet website address: **http://www.mms.gov**
24 hour Fax-on-Demand Service:(202) 219-1703

[Code of Federal Regulations]
[Title 30, Volume 2, Parts 200 to 699]
[Revised as of July 1, 1998]
From the U.S. Government Printing Office via GPO Access
[CITE: 30CFR208.4]

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TITLE 30--MINERAL RESOURCES

CHAPTER II--MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

PART 208--SALE OF FEDERAL ROYALTY OIL--Table of Contents

Subpart A--General Provisions

Sec. 208.4 Royalty oil sales to eligible refiners.

(a) Determination to take royalty oil in kind. The Secretary may evaluate crude oil market conditions from time to time. The evaluation will include, among other things, the availability of crude oil and the crude oil requirements of the Federal Government, primarily those requirements concerning matters of national interest and defense. The Secretary will review these items and will determine whether eligible refiners have access to adequate supplies of crude oil and whether such oil is available to eligible refiners at equitable prices. Such determinations may be made on a regional basis. The determination by the Secretary shall be published in the Federal Register concurrent with or included in the ``Notice of Availability of Royalty Oil'' required by 30 CFR 208.5.

(b) Sale to eligible refiners. (1) Upon a determination by the Secretary under paragraph (a) of this section that eligible refiners do not have access to adequate supplies of crude oil at equitable prices, the Secretary, at his or her discretion, may elect to take in kind some or all of the royalty oil accruing to the United States from oil and gas leases on Federal lands onshore and on the OCS. The Secretary may authorize MMS to offer royalty oil for sale to eligible refiners only for use in their refineries and not for resale (other than under an exchange agreement).

(2) All sales of royalty oil from onshore leases will be priced at the royalty value that would have been determined for that oil pursuant to 30 CFR part 206 had the royalties been paid in value rather than taken in kind. All sales of royalty oil from OCS leases will be priced at the fair market value of the oil including associated transportation costs to the designated delivery point, if applicable.

(3) An eligible refiner must have a representative at a sale in order to participate. The Secretary may, at his or her discretion, establish purchase limitations and withhold any royalty oil from any offering.

(4) The MMS will recover the administrative costs of the RIK Program through the collection of administrative fees. The fees will consist of an

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initial nonrefundable contract fee for each executed contract and a monthly variable charge applied to each lease under contract. The amount of the initial contract fee shall be determined prior to a sale and published in the ``Notice of Availability of Royalty Oil.'' The initial contract fee will be payable in equal installments due at the end of the first and second months of the contract. These contract fees will be applied against the RIK Program's administrative costs, and the remainder of the administrative costs will be recovered through the monthly variable charges per lease, which will be billed and payable concurrently with the monthly actual billings for royalty oil. The rate per lease will be determined by dividing the remaining recoverable administrative costs by the total number of leases under contract. The rate may change depending upon whether total administrative costs change and/or whether the number of leases taken in kind changes from one month to another. In instances where production from a lease is sold on a percentage basis to two or more purchasers, each percentage portion of the lease will be considered a separate lease for purposes of administrative fee determination.

(c) Upon a determination by the Secretary under paragraph (a) of this section that eligible refiners do have access to adequate supplies of crude oil at equitable prices, MMS will not take royalties in kind from oil and gas leases for exclusive sale to such refiners. Such determinations may be made on a regional basis.

(d) Interim sales. The MMS generally will not conduct interim sales. However, interim sales may be held at the discretion of the Secretary if substantial addition royalty oil becomes available. The potentially eligible refiners, individually or collectively, must submit documentation demonstrating that adequate supplies of crude oil at equitable prices are not available for purchase. Although sufficient documentation must be submitted, it is not mandatory for each potentially eligible refiner to participate in a submission of such documentation to be determined eligible. The documentation must be submitted to MMS for a determination as to whether an interim sale is needed.

Attachment 5

RIK DETERMINATION OF NEED RESPONDENTS[1]

Company Name	Type of Company
1. Berry Petroleum	Small, independent refiner
2. Calcasieu Refining	Small, independent refiner
3. Cenco Refining (formerly Powerine)	Small, independent refiner
4. Cenex Harvest States	Producer-to-market cooperative system
5. Ergon Inc.	Independent refiner
6. Farmland Industries	Medium-sized, independent refiner
7. Frontier Oil	Small, independent refiner
8. Gary-Williams Energy Corp.	Small, independent refiner
9. Giant Industries Inc.	Independent refiner/wholesale marketer
10. Huntway Refining	Small, independent refiner
11. Kern Oil and Refining	Small, independent refiner
12. Oxnard Refinery	Small, independent producer/refiner
13. Paramount Refining	Small, independent refiner
14. Petro Star Inc.	Small, independent refiner
15. Placid Refining	Small, independent refiner
16. San Joaquin Refining	Small, independent refiner
17. Santa Maria Refining	Small independent producer/refiner
18. Sinclair Oil Corp.	Small, independent refiner
19. Specified Fuels	Small, independent refiner
20. Ultramar Diamond Shamrock	Independent refiner
21. U.S. Oil and Refining	Small, independent refiner
22. Valero Energy Corp.	Independent refiner
23. Wyoming Refining	Small, independent refiner

[1] See Federal Register Notice, Vol 63, No 236 December 9, 1998

Attachment 6

RIK DETERMINATION OF NEED
RESPONDENT DEMOGRAPHICS

- In response to the F.R. Notice solicitation of Dec 1998, 264 form letter mailings, an official News Release, and advertisement in various fluid mineral publications, we received **23 responses.** (23 respondents represent **41 operating refineries**—42 when one respondent receives required financing.)

- The **type of business activity**, as identified by the respondent, is as follows:

  ⇒ 15 small, independent refiners (65%)
  ⇒ 3 independent refiners (13%)
  ⇒ 1 medium-sized, independent refiner (4%)
  ⇒ 2 small, independent producer/refiners (9%)
  ⇒ 1 producer-to-market cooperative system (4%)
  ⇒ 1 independent refiner and wholesale marketer (4%)

- In terms of **immediate region, or geographic area of operation,** for respondents' refinery(ies):

  ⇒ 7 respondents own and/or operate Gulf Coast/Eastern State refineries
  ⇒ 12 own and/or operate Pacific or Western Onshore refineries
  ⇒ 6 own and/or operate Rocky Mountain or North Central Area refineries
  ⇒ 2 own and/or operate Alaska or Canadian refineries
  Note: These statistics do not total 23 because 2 of the respondents have refineries in more than one region.

- In terms of characterizing the **general availability of crude oil for the geographic area of operation:**

  ⇒ 17 respondents (74%) say, yes, crude is generally available currently with some comments about occasional difficulty getting desired volumes due to producer cutbacks, producers giving limited supplies to affiliates, etc. Several of these respondents also express concern about near or long term access to the market.
  ⇒ 5 respondents say, no, desired crude is not generally available.
  ⇒ 1 respondent cites N/A.

- Regarding **operating at full or near-full capacity:**

  ⇒ 13 respondents have refineries operating at or near full capacity.
  ⇒ 7 respondents have discretely, or implicitly, indicated that they are operating at less than full or near-full capacity.
  ⇒ 1 respondent did not address this issue.
  ⇒ 1 respondent cites N/A.

⇒ 1 respondent has 2 refineries at full capacity, and 1 at less than full.

- Regarding **satisfaction of program eligibility criteria for onshore, OCS, or both:**

  ⇒ All we can say at this point, absent the full verification that would normally take place under the application for royalty oil process preceding any future sale, is that 17 respondents (74%) claim eligibility under both.
  ⇒ 1 claims onshore eligibility only.
  ⇒ 1 claims OCS eligibility only.
  ⇒ 4 claim ineligibility for either program.
  ⇒ **Note:** Per the above, 19 of 23 (83%) satisfy onshore and/or OCS eligibility requirements.

- Regarding **% onshore versus offshore throughput**:

  ⇒ 17 respondents have refineries that run 100% domestic onshore crude oil production. This includes refiners running Alaska North Slope (ANS), which is considered domestic onshore. (See Email from John Barder, RVD.)
  ⇒ 2 respondents did not provide a throughput profile.
  ⇒ 1 respondent runs a 60-40 split favoring domestic onshore production.
  ⇒ 1 respondent runs a 90-10 split favoring domestic onshore production.
  ⇒ 1 respondent runs an 80-20 split favoring domestic offshore production.
  ⇒ 1 respondent cites N/A.

- Regarding **denial to the marketplace in the past 12 to 18 months**:

  ⇒ 14 respondents have not had recent difficulty obtaining crude oil supplies. However, all within this group have directly or indirectly expressed concern about near and long term access as a result of market trends relating to mega-mergers, low prices, production cutbacks, etc. Some also have confided that it's difficult to purchase needed oil "outright"—i.e., they must trade back to the supplier at a strategic location for them to obtain desired crude supplies. (Current RIK refiners frequently use royalty oil to exchange for desired crude.)
  ⇒ 8 respondents have experienced sporadic, ongoing, or singular denials in recent months, with 1 providing documentation confirming a recent denial with regard to a term contract.
  ⇒ 1 respondent cites N/A.
  ⇒ In aggregate, 22 respondents (96%) have either been denied access or believe access may be curtailed in the near future due to certain marketplace occurrences like mega-mergers among the major producers, production cutbacks due to low prices, etc.

- Regarding the **use of exchange agreements (and, where applicable, the importance of RIK in accommodating such agreements)**:

- ⇒ 17 respondents (74%) use exchange agreements in varying degrees to allow them to receive necessary feed stocks for their refineries. All 5 RIK refiners are within this group, and admit using RIK bbl in exchange for desired crude.
- ⇒ 4 respondents do not use exchange agreements.
- ⇒ 1 respondent did not reply to this question.
- ⇒ 1 respondent cites N/A.

- Regarding **whether feeder stocks are priced above market**:

  - ⇒ 10 respondents indicate that purchases are priced at or near market value for their geographic region. Within this group, some concede that this profile could change with prices going up as independent producers cut back on production and research in the face of depressed prices.
  - ⇒ 10 respondents concede that they generally pay a bonus or premium for desired crude.
  - ⇒ 2 chose not to comment on this issue.
  - ⇒ 1 respondent cited N/A.

- Regarding **provision of refined products to military bases, Federal installations, or local State agencies, municipalities, etc.**:

  - ⇒ 14 respondents currently provide jet fuel and other refined products to various military bases and other Federal installations. Within this group, 1 respondent claims to provide 29% of military jet fuel consumed in 2 States. The same respondent claims to provide 25% of military diesel fuel consumed in 1 of those States. Another respondent claims to have provided a particular Naval Base with asphalt since 1938. One other respondent in this group concedes that it supplies about 11% of Defense Energy Support Center (DESC) jet fuel (JP-8) used in 1 State. The same respondent also supplies about 45% of DESC military marine diesel fuel consumed in that State. Two other respondents in this group provide 62 million gallons of JP-8/JP-5 to military activities in 1 State, and 72 million gallons of JP-8/JP-5 to military facilities along the Plantation Pipeline System, respectively.
  - ⇒ 4 respondents provide refined products to States, cities, and local municipalities. Within this group, 1 respondent provides gasoline and distillates marketed in 19 cities in 7 States. Another supplies a significant amount of 2 States' demand for paving asphalt.

- Regarding ***actual* current benefits accruing from the small refiner RIK program, or *potential* benefits based on perceived near or long term market developments**:

  - ⇒ 17 respondents (74%) are currently benefitting from the program and/or perceive future benefits based on marketplace trends. Some of the conditions cited, which argue very strongly for program continuance, include: current trend towards mega-mergers among major oil companies, combined with acquisition of independent producers, makes it exceedingly difficult for small refiners to obtain and transport needed crude oil; crude oil accessibility is further curtailed by current low prices, and related production cutbacks—a scenario which typically results in majors giving dwindling supplies to their affiliates first and allotting leftovers to non-affiliates on a short term, or spot market, basis; further reduction of domestic supplies occasioned by the sale of Elk Hills (previously a Naval Petroleum Reserve having a set-aside program for small refiners); and lifting of the Alaska North Slope (ANS) crude export ban.

⇒ Within the group of 17 respondents who are either now tangibly benefitting from the program or strongly believe they would benefit, several have commented on RIK's importance to their economic survival AND to national defense. Regarding the latter, the point is driven home that having a diversity of suppliers and locations for our country's military jet fuel needs is paramount for national security. Without having access to crude supplies at equitable prices, small independents would not be able to satisfy current and future government requirements for jet fuel and other refined products like Naval propulsion distillate. In a nutshell, then, these respondents would concede that current marketplace trends, which may persist for the foreseeable future, as well as their lack of competitive clout within that marketplace, argue very strongly for program continuance.